IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.2886 OF 2006
IN
FIRST APPEAL NO.1477 OF 2006

MITC Rolling Mills Pvt.Ltd.,
and Ors. ..Applicants

Vs.

Khangal Enterprises ..Respondent.

Mr.Shailesh S. Shah i/b. R.R.Nagde, Advocate for the Applicants.

Ms.Sarojini Patil, Advocate for the Respondent.

CORAM : SMT.RANJANA DESAI AND
SMT.V.K.TAHILRAMANI,JJ.

DATED : SEPTEMBER 01, 2006.

P.C.:-

1. By this Civil Application, the applicants have prayed that the impugned judgment and decree which directs the applicants to pay to the respondent a sum of Rs.4,52,675/- with interest at the rate of 12% per annum from the date of filing of suit until its realisation, be stayed.

2. We have heard the learned counsel for the

parties.

3. In the suit filed by the respondent the main prayer is that the present applicants be directed to pay Rs.4,52,675/- and take possession of the manufactured 1600 KVA transformer.

4. On the last occasion, when this matter was heard for admission and interim relief, a statement came to be made by the learned counsel for the applicants that the applicants be given inspection of the transformer and if the transformer is found in order, the applicants were inclined to pay the price as per the decree and take its possession. Considering the fact that there was possibility of settlement and since the learned counsel for the parties agreed, we passed an order on 25.8.2006, in which we noted that there was possibility of settlement. We recorded the statement of the learned counsel for the applicants that the applicants will take inspection of the transformer on Wednesday i.e. 30.8.2006. We had directed the office to place this

matter on board on 1.9.2006. Accordingly, today the matter is placed on board. Today, the learned counsel for the applicants states that as directed by this court their persons went to inspect the transformer, but, they were not permitted to inspect. On the other hand, the learned counsel for the respondent says that the applicants wanted to take photographs of the transformer and hence inspection was denied.

5. We then asked the learned counsel for the respondent, whether a fresh date could be fixed for inspection. She stated that her client is out of station and that no such inspection could now be arranged. She then contended that the applicants can not buy the transformer at the same rate. We have found the approach of the respondent to be very unreasonable. When we directed inspection, it was because at that stage it was stated by both the counsel that the matter was likely to be settled. After the inspection, if there was some dispute about the price, some amicable settlement in that regard

could also have been arrived at. But, today the respondent is taking a totally contrary stand. The learned counsel for the applicants has reiterated that the applicants/appellants are willing to buy the transformer after making necessary payment after inspecting it and finding that it is in order. That would have put an end to the dispute. However, looking to the adamant approach of the respondent, we feel that no settlement is possible. The Court cannot force any settlement of the parties. Hence we have admitted the appeal. So far as the prayer for stay is concerned, we feel that in the peculiar facts and circumstances of the case the following order will meet the ends of justice.

ORDER

(a). On the applicants depositing a sum of Rs.3,00,000/- in this Court within four weeks from today, there will be interim relief in terms of prayer clauses (a)(i) & (a)(ii).

(b). On deposit of the aforesaid amount, the Registrar General of this Court is directed to invest the said amount in any nationalised bank on usual terms.

(c). The amount deposited will abide by the final orders which will be passed in the Appeal.

(d). Civil Application is disposed of in the aforestated terms.

[SMT.RANJANA DESAI,J.]

[SMT.V.K.TAHILRAMANI,J.]